

AMENDED IN ASSEMBLY JANUARY 22, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 46

Introduced by Assembly Member Simitian

December 2, 2002

An act to add Section 1798.86 to the Civil Code, and to amend Section 530.5 of, and to add Section 667.13 to, the Penal Code, relating to identity theft.

LEGISLATIVE COUNSEL'S DIGEST

AB 46, as amended, Simitian. Identity theft.

Existing law prohibits any person or entity, not including a state or local agency, from using an individual's social security number in specified ways, including posting it publicly or requiring it for access to products or services. Existing law provides specified exceptions from the above provisions.

This bill would, in addition, prohibit any university or college located in California from using a social security number as a student identifier and would prohibit any employer from requiring an employee to use his or her social security number for any purpose other than taxes.

Existing law makes every person who willfully obtains personal identifying information of another person, and uses that information for any unlawful purpose, guilty of a misdemeanor or a felony.

This bill would make it a misdemeanor for an adult relative, parent, or guardian of a minor to sell, give, or distribute personal identifying information of a minor, with the knowledge that the information will be used in violation of the above provision relating to unlawful use of personal identifying information.

Existing law makes it a crime to falsely personate a person so as to do any an act that would render the person impersonated liable for a suit or prosecution.

The bill would create a one-year enhancement for any person who commits false personation in those circumstances, or who unlawfully uses personal identifying information, against a person who is under 18 years of age at the time the crime was committed and the victim's age is known or reasonably should have been known to the person committing the crime. Additionally, if the person who commits the crime is an adult relative, parent, or guardian of the victim, or someone who was provided identifying information from a relative, parent or guardian of the victim, the person committing the crime would receive an additional one-year enhancement for each violation. Because this bill would create a new crime and create a new enhancement, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1798.86 is added to the Civil Code, to
2 read:

3 1798.86. In addition to Section 1798.85, the following
4 restrictions on the use of social security numbers shall apply:

5 (a) No university or college located in California may use a
6 social security number as a student identifier.

7 (b) No employer may require an employee to use his or her
8 social security number for any purpose other than taxes.

9 ~~SEC. 2. Section 530.5 of the Penal Code is amended to read:~~

10 ~~530.5. (a) Every person who willfully obtains personal~~
11 ~~identifying information, as defined in subdivision (b), of another~~
12 ~~person, and uses that information for any unlawful purpose,~~
13 ~~including to obtain, or attempt to obtain, credit, goods, services,~~
14 ~~or medical information in the name of the other person without the~~

1 consent of that person, is guilty of a public offense, and upon
2 conviction therefor, shall be punished either by imprisonment in
3 a county jail not to exceed one year, a fine not to exceed one
4 thousand dollars (\$1,000), or both that imprisonment and fine, or
5 by imprisonment in the state prison, a fine not to exceed ten
6 thousand dollars (\$10,000), or both that imprisonment and fine.

7 (b) “Personal identifying information,” as used in this section,
8 means the name, address, telephone number, driver’s license
9 number, social security number, place of employment, employee
10 identification number, mother’s maiden name, demand deposit
11 account number, savings account number, or credit card number
12 of an individual person.

13 (c) In any case in which a person willfully obtains personal
14 identifying information of another person without the
15 authorization of that person, and uses that information to commit
16 a crime in addition to a violation of subdivision (a), and is
17 convicted of that crime, the court records shall reflect that the
18 person whose identity was falsely used to commit the crime did not
19 commit the crime.

20 (d) An adult relative, parent, or guardian of a minor who sells,
21 gives, or distributes personal identifying information of a minor,
22 with the knowledge that the information will be used in violation
23 of subdivision (a), shall be punished by imprisonment in a county
24 jail not to exceed one year, a fine not to exceed one thousand
25 dollars (\$1,000), or both that imprisonment and fine.

26 SEC. 2. Section 530.5 of the Penal Code is amended to read:

27 530.5. (a) Every person who willfully obtains personal
28 identifying information, as defined in subdivision (b), of another
29 person, and uses that information for any unlawful purpose,
30 including to obtain, or attempt to obtain, credit, goods, services,
31 or medical information in the name of the other person without the
32 consent of that person, is guilty of a public offense, and upon
33 conviction therefor, shall be punished either by imprisonment in
34 a county jail not to exceed one year, a fine not to exceed one
35 thousand dollars (\$1,000), or both that imprisonment and fine, or
36 by imprisonment in the state prison, a fine not to exceed ten
37 thousand dollars (\$10,000), or both that imprisonment and fine.

38 (b) “Personal identifying information,” as used in this section,
39 means the name, address, telephone number, health insurance
40 identification number, taxpayer identification number, school

1 identification number, state or federal driver's license number, or
2 identification number, social security number, place of
3 employment, employee identification number, mother's maiden
4 name, demand deposit account number, savings account number,
5 checking account number, PIN (personal identification number)
6 or password, alien registration number, government passport
7 number, date of birth, unique biometric data including fingerprint,
8 facial scan identifiers, voice print, retina or iris image, or other
9 unique physical representation, unique electronic data including
10 identification number, address, or routing code,
11 telecommunication identifying information or access device,
12 information contained in a birth or death certificate, or credit card
13 number of an individual person.

14 (c) In any case in which a person willfully obtains personal
15 identifying information of another person, uses that information
16 to commit a crime in addition to a violation of subdivision (a), and
17 is convicted of that crime, the court records shall reflect that the
18 person whose identity was falsely used to commit the crime did not
19 commit the crime.

20 (d) Every person who, with the intent to defraud, acquires,
21 transfers, or retains possession of the personal identifying
22 information, as defined in subdivision (b), of another person is
23 guilty of a public offense, and upon conviction therefor, shall be
24 punished by imprisonment in a county jail not to exceed one year,
25 or a fine not to exceed one thousand dollars (\$1,000), or by both
26 that imprisonment and fine.

27 (e) *An adult relative, parent, or guardian of a minor who sells,*
28 *gives, or distributes personal identifying information of a minor,*
29 *with the knowledge that the information will be used in violation*
30 *of subdivision (a), shall be punished by imprisonment in a county*
31 *jail not to exceed one year, a fine not to exceed one thousand*
32 *dollars (\$1,000), or both that imprisonment and fine.*

33 SEC. 3. Section 667.13 is added to the Penal Code, to read:

34 667.13. (a) Any person who commits false personation as
35 defined in paragraph (3) of Section 529 or identity theft as defined
36 in Section 530.5 against a person who is under 18 years of age and
37 the victim's age is known or reasonably should have been known
38 to the person committing the crime, shall receive a one-year
39 enhancement for each violation.

1 (b) If the person who commits the crime under subdivision (a)
2 is an adult relative, parent, or guardian of the victim, or someone
3 who was provided identifying information from a relative, parent,
4 or guardian of the victim, the person committing the crime shall
5 receive an additional one-year enhancement for each violation in
6 addition to the enhancement in subdivision (a).

7 SEC. 4. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.

